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Nova Scotia. Provincial Secretary, Office of the
Claims against Dominion government.
Halifax, 1898.

Gov. Doc.
N.S.
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Nova Scotia, Printed and
Published by the
Government of the Province



LEGISLATURE OF NOVA SCOTIA.

SESSION 1898.

CLAIMS AGAINST DOMINION
GOVERNMENT.





CLAIMS AGAINST DOMINION GOVERNMENT.

HALIFAX, N. S.,

October 15th, 1897.

SIR :—

On the 21st day of April, 1891, on motion of the Hon. W. S. Fielding, Provincial Secretary, the following resolution was adopted by the House of Assembly of Nova Scotia by a vote of 24 to 9 :

“ *Resolved*—That a Committee of this House, consisting of five members, be appointed to prepare an Address to His Excellency the Governor-General of the Dominion, on the claim of the Province to be refunded moneys expended from the Provincial Treasury on account of the Eastern Extension Railway, which now forms part of the Intercolonial Railway of Canada, and of the Western Counties Railway, which has been declared a railway for the general advantage of Canada.”

Subsequently, on the 28th day of April, 1891, the following committee was appointed to draft an Address to His Excellency the Governor-General respecting the question of railway refund: Honorable W. S. Fielding, Mr. Drysdale, Honorable Mr. McIsaac, Mr. Sperry and Mr. Hunt. On the 15th day of May the Honorable Mr. Fielding, from the Select Committee nominated to prepare an Address to His Excellency the Governor-General, presented the report of the Committee and read the Address, which was in the following terms :

“ To His Excellency the Right Honorable SIR FREDERICK ARTHUR STANLEY, Baron Stanley, of Preston, in the County of Lancaster, in the Peerage of Great Britain, Knight Grand Cross of the Most Honorable Order of the Bath, Governor-General of Canada, and Vice-Admiral of the same :

May it please Your Excellency :

We, Her Majesty's dutiful and loyal subjects, the members of the House of Assembly of Nova Scotia, beg leave to address Your Excellency on the subject of certain claims of the Province of Nova Scotia, and to submit to Your Excellency's consideration the following statements :

That the Intercolonial Railway of Canada, extending from the Harbor of Quebec to the Harbor of Sydney, in the Island of Cape Breton, is fully recognized by the Government and Parliament of Canada as a Dominion work ;

That one section of the said railway, extending from the Town of New Glasgow, in the County of Pictou, to Port Mulgrave, in the County of Guysborough, a distance of about eighty miles, was not constructed by the Government of Canada, but was subsidized by the funds of the Province of Nova Scotia to the extent of six hundred and seventy-one thousand eight hundred and thirty-six dollars and two cents (\$671,836.02) ;

That such section of the Intercolonial Railway, formerly called the Eastern Extension Railway, was constructed by a company under legislation of the Province of Nova Scotia, in conjunction with legislation of the Parliament of Canada granting the Pictou Branch of the Intercolonial as a bonus to assist such construction ;

That under such legislation the Pictou Branch was to be transferred to the company on the completion of the Eastern Extension Railway, or to the Government of Nova Scotia, in event of their acquiring the Eastern Extension Railway from the company ;

That the Government of Nova Scotia acquired the said Eastern Extension Railway from the company, and applied to the Government of Canada for a transfer of the Pictou Branch ;

That the Government of Canada refused to transfer said Pictou Branch, except upon conditions which the Government of Nova Scotia deemed unjust ;

That negotiations were entered into between the Government of Canada and the Government of Nova Scotia with a view to a transfer of the Provincial interests in the said Eastern Extension Railway to the Dominion ;

That in such negotiations a refund of the Provincial subsidy was sought by the Government of Nova Scotia and was refused ;

That the Government of Nova Scotia, being compelled to accept such terms as the Government of the Dominion would agree to, or enter upon protracted and expensive litigation to assert the rights of the Province, consented to dispose of the Provincial interests in the said railway for a sum estimated to be equal to the cost to the Province of acquiring the road from the company, apart altogether from the sum paid to the company by the Province by way of subsidy ;

That notwithstanding such disposal of the property to the Dominion, the Province has an equitable right to be refunded its expenditure on what is acknowledged to be a part of the Inter-colonial Railway of Canada ;

That while it is the established policy of the Government of Canada, in constructing sections of the Intercolonial Railway, to pay the cost of land for the track of said railway, in the case of the railway from New Glasgow to Port Mulgrave the right of way was paid for by the Municipalities of Pictou, Antigonish and Guysborough, under Acts of the Legislature of Nova Scotia ;

That the Western Counties Railway Company was incorporated by the Legislature of Nova Scotia for the purpose of constructing and operating a line of Railway from Annapolis to Yarmouth :

That upon the faith of such Provincial legislation the Government and Legislature of Nova Scotia granted and paid to the Western Counties Railway Company subsidies amounting to six hundred and seventy-nine thousand one hundred and ninety-seven dollars and forty-five cents (\$679,197.45) ;

That in the year 1887, the Parliament of Canada, without the consent of the Legislature or Government of Nova Scotia, passed an Act whereby the said Western Counties Railway was declared to be a work "for the general advantage of Canada" and "subject to the legislative authority of Canada ;"

That in recognizing the said Western Counties Railway as a work "for the general advantage of Canada" the Parliament of the Dominion virtually admits that the public aid for the purpose of constructing such railway should have been given from the treasury of the Dominion, and not from the treasury of the Province.

We, therefore, humbly pray that Your Excellency may be pleased to take such steps as will lead to the payment by the Government of Canada to the Government of Nova Scotia of the sums of money expended by the Province in the construction of the railway from New Glasgow to Port Mulgrave, and of the railway from Annapolis to Yarmouth, and to the payment to the Municipalities of Pictou, Antigonish, St. Mary's and Guysborough of the sums expended by them for right of way of the railway from New Glasgow to Port Mulgrave, with interest in each case.

And your Memorialists, as in duty bound, will ever pray."

Which Address was adopted by a majority of 18 to 7.

On said 15th day of May, 1891, this Address was in due course forwarded to His Excellency the Governor-General, through the Lieutenant-Governor of the Province, and its receipt duly acknowledged. Not receiving any definite reply to the communication, the Government of Nova Scotia, in 1892, appointed a delegation, consisting of two members of the Government, the Hon. J. W. Longley and Hon. Thomas Johnson, to proceed to Ottawa to urge upon the Government of Canada a compliance with the terms of the Memorial. Subsequently an official communication was received from the Government of Canada, through the Secretary of State, declining to entertain the claim.

So much impressed is the Government of Nova Scotia with the justness of its claim that, notwithstanding the previous refusal on behalf of the Canadian Government, we feel it proper that we should again submit our claim in detail to the present administration, in the hope and expectation that it may receive a more just and liberal consideration:

From the Memorial already referred to the general character of the claims of Nova Scotia upon the Dominion Government will be obtained. Perhaps, however, it is desirable that the matter should be stated more fully in detail.

EASTERN EXTENSION RAILWAY.

The terms of Confederation imposed upon the Federal Government the responsibility of constructing the Intercolonial Railway as a Government work, and, while the actual terms of the British North America Act only required that the railway should connect the River St. Lawrence with the City of Halifax in Nova Scotia, the Government have seen fit as a matter of public policy to extend this road on the one side from River DeLoup to Levis, and still later to the City of Montreal, and on the other to Sydney Harbor, in the County of Cape Breton. Every portion of this railway has been constructed and paid for out of the consolidated revenues of Canada, and the right of way for the whole work has been paid for out of the consolidated revenues of Canada, except one portion between New Glasgow and the Strait of Canso. That portion was built by the Halifax and Cape Breton Railway and Coal Company by aid of a liberal subvention from the Government of Nova Scotia. It was undertaken upon condition that on its completion it should be further aided by being handed over the line of railway then belonging to the Dominion between Truro and Pictou, and which was then and still is a very profitable piece of road. Believing that it was in the public interest that this Eastern Railway system should be in the hands of the Provincial Government rather than in the hands of a company, the Government of Nova Scotia, in the

session of 1883, took steps to acquire the Eastern Extension Railway which carried with it the right of possession and ownership of the Pictou Branch. A clause had been inserted in the contract with the Halifax and Cape Breton Railway and Coal Company enabling the Government, after the completion of its line, to take it over by paying the amount of the actual outlay of the company over and above the amount of subsidy it had received from the Government. The power of acquiring was exercised, and the Eastern Extension Railway came into the hands of the Government during the year 1883, and was operated by the Commissioner of Public Works. On applying to the Dominion Government for the handing over of the Pictou Branch, under the terms of the agreement and Act of Parliament, the Federal Government imposed such conditions in respect to the transfer as made it impossible for the Government of Nova Scotia to carry out its policy of acquiring and managing the Eastern Railway system, with its contemplated extension through the Island of Cape Breton, without incurring financial responsibilities far beyond its resources. The terms which the Dominion Government imposed as the condition of handing over the Pictou Branch were so unreasonable and so exacting as to raise a very strong presumption that they were imposed in furtherance of the well devised policy of the Government to themselves make this Eastern Extension a part of the Intercolonial and extend the same to Sydney Harbor. The result was that the Government of Nova Scotia was compelled reluctantly to abandon its own policy and to hand over the Eastern Extension Railway to the Dominion Government as a part of the Intercolonial Railway system upon being refunded the amount that they had actually paid to the Halifax and Cape Breton Railway and Coal Company. At the time of this transfer, as will be found in the Journals of the House of Assembly, 1884, the Honorable Messrs. Pipes and Fielding, who were the delegates representing the Government of Nova Scotia, urged on behalf of the Government of Nova Scotia that the Dominion Government, on taking over the Eastern Extension Railway, should not only pay its cost to the Provincial Government, but the Provincial subsidy as well, and no doubt this would have been insisted upon if it had not been that the action of the Dominion Government in refusing to hand over the Pictou Branch, except upon terms which were quite unreasonable and quite impossible of fulfilment, compelled the Provincial Government, in self-defence, to give up the road upon being recouped the actual amount which had been paid out to the company.

The fact remains that from Levis to Sydney Harbor every single mile of the Intercolonial Railway now running, has been paid for out of the consolidated revenues of Canada, including the right of way, with the exception of the short piece between New Glasgow and the Strait of Canso, and this part of the national highway has been partially paid for out of the revenues of the Province of Nova Scotia, and the right of way has been paid for by the ratepayers of

the Municipalities of Pictou, Antigonish, St. Mary's and Guysborough. The Government of Nova Scotia simply ask that this portion of the Intercolonial Railway be placed in precisely the same position as all the other parts of the Intercolonial Railway; that the sum of six hundred and seventy-one thousand eight hundred and thirty-six dollars (\$671,836), which the Province of Nova Scotia, out of its limited resources, has paid as a subsidy to this part of the Intercolonial Railway, be refunded to the Province, inasmuch as if the Intercolonial Railway had been extended by the Dominion Government eastward, as it actually has been in accordance with its well defined policy, it would have been necessary to have paid for the construction of the portion between New Glasgow and the Strait of Canso, as much as the amount which has actually been paid for it, plus the subsidy which has been paid out of the revenues of the Province of Nova Scotia; also the cost of the right of way. The piece of road between the Strait of Canso and Sydney Harbor stands in precisely the same position as a part of the whole national work. Every dollar of the cost of construction has been paid for by the Dominion Government, and it will be difficult to devise means of pointing out any distinction which exists between the case of that portion of the Intercolonial Railway and the portion between New Glasgow and the Strait of Canso, toward which the Province of Nova Scotia has actually contributed the sum of six hundred and seventy-one thousand eight hundred and thirty-six dollars (\$671,836).

It is scarcely necessary to remind you of the action of the Government of Canada in relation to the Province of Quebec in respect of a case so very similar to this, only, perhaps, not as strong. In that case the Dominion Government undertook to refund to the Province of Quebec their subsidies paid for the Quebec, Montreal, Ottawa and Occidental Railway, because it seemed to be a part of the general railway system of the country. The case surely is not as strong as in a case where the road itself becomes the property of the Federal Government and is being operated now as a national Government Railway.

The claim, therefore, of the Province of Nova Scotia is that this sum should be refunded with interest and that the amount paid by the Municipalities of Pictou, Antigonish, St. Mary's and Guysborough for a right of way should likewise be refunded to those Municipalities.

WESTERN COUNTIES RAILWAY.

The Province of Nova Scotia at a previous date granted a large subsidy for the construction of a railway from Annapolis to Yarmouth to a company called the Western Counties Railway Company. The company proceeded with the construction of the work under Provincial Charter, and it therefore was a railway

belonging to the Province of Nova Scotia, under the control of the Legislature of Nova Scotia under the provisions of the British North America Act, which gives the Provincial authorities control of public works situate entirely within the boundaries of the Province. The portion between Yarmouth and Digby was completed, and the company had drawn from the Provincial Treasury a subsidy amounting in all to six hundred and seventy-nine thousand one hundred and ninety-seven dollars (\$679,197). The part between Digby and Annapolis remained uncompleted, and in order to secure the completion of the road between Digby and Yarmouth, a further advance of fifty thousand pounds sterling (£50,000) was advanced to the company and a lien was taken on the work accompanied with the power of sale.

In 1887 a measure was introduced into the Parliament of Canada providing measures whereby the construction of the road between Annapolis and Digby could be secured, and a clause was inserted into the Act making this Western Counties Railway a railway for the general advantage of Canada. This was within the power of the Dominion Parliament under the British North America Act. There seems to be no limitation to the power of the Federal Government to make any public work, constructed by a Province and owned by a Provincial Government, a work for the general advantage of Canada, and the work thereupon becomes subject to the control of the Federal Parliament. While this power is conceded, it has been questioned, and it is certainly open to question, whether it was ever a fair construction of the spirit and scope of the British North America Act that this should be done without compensation. For example, if the Province of Nova Scotia constructed a public work out of Provincial revenues, and this was a work which was being administered by the Province for Provincial purposes, it can scarcely be conceived that this work should by an arbitrary Act of the Federal Parliament be transferred to the control of the Government of Canada without compensation to the Province for whatever outlay it has made in respect of it, or its existing value at the time being to the Province. When this Act was before the Dominion Parliament and its provisions became known to members of the Provincial Government of Nova Scotia, immediate steps were taken to call the attention of the Federal Government to this feature of the Act, which not only took the control of a railway which had been built very largely from Provincial subsidies out of the control of the Provincial Legislature, but endangered, on the face of it, the value of the securities which the Province held for money advanced.

The following correspondence which took place at the time will indicate the steps which the Provincial Government took to guard Provincial interests in this regard :

“ HALIFAX, 16th June, 1897.

“ SIR CHARLES TUPPER, Minister of Finance,

HON. A. W. McLELAN, Postmaster-General,

HON. J. S. D. THOMPSON, Minister of Justice,

Ottawa,

Ontario :

“ Have just seen in the public press copy of a Bill now before the Dominion Parliament respecting the Western Counties Railway. On behalf of the Government of Nova Scotia I protest against the passage of said Bill. Its provisions, if enacted, would be a flagrant violation of the constitutional rights of the Province, and a direct repudiation of the company's debts which they induced the Province to guarantee. Besides making very liberal grants of money and land as subsidy to this road, the Provincial Government in 1879 guaranteed the company's debentures in perpetuity to the amount of fifty-five thousand pounds sterling, taking as security a first lien on the road, with power of sale in event of default. The company have been in default from the beginning under that agreement, having neither paid the interest nor fulfilled the other conditions. Our Government have generously refrained from exercising their powers of sale. The company now, without any communication from our Government, apply to the Dominion Parliament for an Act intended to take the road out of the legislative control of the Province, wipe out the only security the Province has, and authorize the issue of new debentures to be a first charge. The measure is so flagrantly wrong that we cannot believe the Parliament of Canada will allow it to pass. We do not admit the power of that Parliament to give legal value to the Company's Bill, but we prefer at present to urge the moral rather than the legal objections to the course taken by the Western Counties Company. We think the Government of the Dominion should be made aware of the extraordinary character of the measure referred to, and therefore this telegram is sent to each of the Ministers from Nova Scotia in the hope that they will take steps to prevent the passing of the Bill.

(Sgd.) W. S. FIELDING,

Provincial Secretary.

OTTAWA, 16th June, 1887.

HON. W. S. FIELDING,

Halifax :

Bill of Western Counties Railway, as introduced, was not approved by Government or Railway Company. As amended, no lien is disturbed until the holder of it assents. New debentures cannot displace these formerly issued without assent of every debenture holder. Having no wish to see rights or securities of Province impaired, would be glad to know what feature of Bill as amended will have that effect in your opinion. Do not agree with you as to our right to take control of this railway, or as to effect of that step being injurious to Nova Scotia.

(Sgd.) J. S. D. THOMPSON.

HALIFAX, June 17th, 1887.

HON. JOHN S. D. THOMPSON,

Minister of Justice,

Ottawa, Ont. :

I cannot point out any objectionable features in the Bill as amended, because I have never seen the amendments. If our lien is to be protected it should be in the clearest and most unquestionable terms. The Bill should contain a clause providing that nothing therein shall be held to abridge, restrict, or in any way affect the power of sale or any other power, right, or privilege given to the Government of Nova Scotia by the Western Counties Railway Company under and by virtue of a certain agreement made on the 16th day of August, 1879, between Her Majesty the Queen, represented by the Honorable Samuel Creelman, Commissioner of Public Works and Mines for the Province of Nova Scotia, and the Western Counties Railway Company. Will this clause be inserted? The agreement, which you are familiar with, will be found in the Engineer's Report in the Journals of 1880.

(Sgd.) W. S. FIELDING.

HALIFAX, June 18th, 1887.

SIR CHARLES TUPPER,
Minister of Finance,
Ottawa :

Have not seen the amendments to Western Counties Bill. Have sent to Minister of Justice a clause which seems to be essential if the protection of our interests is to be real.

(Sgd.) W. S. FIELDING.

HALIFAX, 22nd June, 1887.

HON. SIR CHARLES TUPPER,
Minister of Finance,
Ottawa, Ont. :

Please have sent to me to-day by wire the text of the amendments to the Western Counties Railway Bill, which the Minister of Justice says protects the claim of our Government.

(Sgd.) W. S. FIELDING.

SIR CHARLES TUPPER,
Ottawa :

The words of the amendment are good so far as they go, but something more is required. If the intention is to give a bona fide protection to our claim, we cannot understand why the clause proposed in my telegram to the Minister of Justice is not added. We still protest against the passage of the Bill in its present shape.

(Sgd.) W. S. FIELDING.

In addition to that a telegram was sent by the Attorney-General, Mr. Longley, to Sir John Thompson, Minister of Justice, drawing attention to the objectionable character of this legislation, dated June 16th, to which the following was received in reply :

OTTAWA, 16th June, 1887.

HON. ATTORNEY-GENERAL :

I am not aware of any provisions in any Bill being passed that will affect injuriously any security of the Province. Does your telegram refer to the Company's Bill or to the Government Bill affirming the contract? Please refer me to the particular provision you think objectionable.

(Sgd.) J. S. D. THOMPSON.

To which the following answer was sent :

HALIFAX, June 17th, 1887.

TO THE MINISTER OF JUSTICE,

Ottawa :

Referred entirely to Mill's Bill. Section one of copy I have seen makes Western Counties Railway for general advantage of Canada. Clause five authorizes debentures, and clause eight makes those first lien. Have understood that this has been made subject to Nova Scotia Government lien, but as the instrument was taken by the Government of Nova Scotia in 1879 only gives us power of sale, the making of Western Counties a railway for the advantage of Canada threatens to interfere with our power of sale. My view is that Mill's Bill ought not to abridge in any way the securities now available to this Province.

(Sgd.) J. W. LONGLEY.

The Act was passed making this railway a railway for the general advantage of Canada, and although the security of the Provincial Government for the amount of its special advance of fifty thousand pounds (£50,000) was guarded by a special clause in the Act, yet the fact remains that this Railway, which was constructed under Provincial charter and in which six hundred and seventy-nine thousand one hundred and ninety-seven dollars (\$679,197) of the Provincial money was invested in order to secure its construction, was by an arbitrary Act of the Dominion Parliament taken entirely out of Provincial control and brought under the control of the Federal authorities.

It is submitted that the principle of compensation distinctly applies in this case, nor is this diminished by the argument that the Dominion Government, in supplying means whereby the link between Digby and Annapolis was completed, was thereby conferring a benefit upon certain portions of western Nova Scotia. The fact remains that a public work in which the Province of Nova Scotia had an interest amounting to six hundred and seventy-nine thousand one hundred and ninety-seven dollars (\$679,197) was taken out of the control of the Legislature of Nova Scotia and vested in the Dominion, and the right to be compensated for whatever substantial interest the Province had in this road is as clear and as strong as would be the case of a public building which had been constructed entirely by Provincial money.

The claim of the Province in respect of this Western Counties Railway is that in making it a road for the general advantage of Canada, the Dominion Government assumed the moral and legal obligation to refund the subsidy which the Province of Nova Scotia had paid in order to secure its construction.

In respect of these two claims I have to approach the Federal Government through you with the confident hope and expectation that this claim will receive a more just and liberal consideration than it received from the late administration.

Yours very truly,

G. H. MURRAY.

TO THE HON. A. G. BLAIR,
Minister of Railways,
Ottawa.

OFFICE OF THE MINISTER OF RAILWAYS AND CANALS,
OTTAWA,
24th Dec., 1897.

MY DEAR SIR,—

Your letter of the 29th inst. reached me in due course, enclosing an official communication on the subject of railway claims by your Province against the Federal Govt. Shall be pleased to see and hear you on the question to which your memorial relates.

Yours faithfully,

(Sgd.) AND. G. BLAIR.

HON. G. H. MURRAY, Halifax.

REPORT OF DELEGATION TO OTTAWA.

HALIFAX, N. S., Jan. 31st, 1898.

At the beginning of the year it was considered desirable that a special delegation be sent to Ottawa to more fully explain the nature of the claims of this Province upon the Dominion Government for a refund of certain subsidies advanced in respect of the Eastern Extension and the Western Counties Railways, and accordingly the undersigned were duly appointed to go to Ottawa for that purpose.

Your delegates arrived at Ottawa on the 7th of January, and proceeded forthwith to interview the Honorable A. G. Blair, Minister of Railways and Canals, to whose department the special consideration of these claims belongs. The Minister accorded a long interview, in which every phase of the matter was fully and carefully discussed.

We subsequently called upon the Honorable W. S. Fielding, Minister of Finance, as one of the representatives of Nova Scotia in the cabinet. It is to be regretted that the Honorable Dr. Borden, Minister of Militia, the other representative of Nova Scotia, was absent in England, and we were unable to avail ourselves of his assistance in furthering these claims.

Subsequently we called upon the Right Honorable Sir Wilfrid Laurier, Prime Minister, and, after fully presenting the claims of the Province, we made an arrangement whereby we were to have a hearing before the full Cabinet on Tuesday afternoon, for the purpose of fully explaining the matter and discussing all the various phases of the claim, and answering, if necessary, any objections which might be presented.

Accordingly, on Tuesday afternoon, the 11th inst., the delegates were accorded a hearing before the full cabinet, every member being present except the Honorable Dr. Borden.

The fullest opportunity was accorded, and more than two hours were occupied in a most thorough discussion of the nature and character of the provincial claims, and we have much pleasure in bearing testimony to the extremely courteous manner in which the opportunity of presenting our claim was afforded, and for the patient and thorough manner with which the whole cabinet approached the consideration of our claim.

It was of course impossible to obtain any definite answer from the Government at this stage. As it was deemed desirable that every document bearing upon the history of the transactions leading up to the present claim should be in clear and consecutive form before each member of the Cabinet, it was arranged that as a supplement to the official communication already addressed to the Minister of Railways and Canals and to the verbal discussion of the question before the Privy Council, a printed brief should be prepared, embodying every document of importance bearing upon the question, thus placing every salient fact in relation to the matter at the easy command of each of the Ministers.

We feel it proper to observe that after preliminary discussion of the claims with the Minister of Railways and Canals and other members of the Cabinet, we confined our remarks in the hearing before the Privy Council chiefly to the claim in respect to the Eastern Extension Railway, leaving the matter of the Western Counties claim in abeyance for the present.

While not in a position to make any statement in regard to the probable action of the Government, we have every confidence that the claims which have been so fully and clearly presented, will receive fair consideration at the hands of the present Federal Government.

We have the honor to be,

&c., &c., &c.,

(Sgd.) G. H. MURRAY,

(Sgd.) J. W. LONGLEY.

TO HIS HONOR THE LIEUTENANT-GOVERNOR.





